AIKEN NOMINATION/District Judge

SUBJECT: **Nomination of Ann L. Aiken, of Oregon, to be a United States District Judge for the District of Oregon. Confirmation.**

ACTION: NOMINATION CONFIRMED, 67-30

SYNOPSIS: Ann L. Aiken was born December 29, 1951, in Salem, Oregon. She received a B.A. from the University of Oregon in 1974, an M.A. from Rutgers University in 1976, and a J.D. from the University of Oregon School of Law in 1979. Her employment history includes the following: 1979-1980, Law Clerk, Honorable Edwin E. Allen; 1980-1982, Attorney, Sahlstrom & Dugdale, PC; 1982, Fundraiser/Field Staff, Kulongoski for Governor; 1982-1983, Chief Clerk, Oregon House of Representatives; 1983-1988, Attorney, Thorp, Dennett, Purdy, Golden & Jewett, P.C.; 1988-1993, Oregon District Court Judge; and 1993-present, Oregon Circuit Court Judge.

Those favoring confirmation contended:

Argument 1:

We are pleased to support confirmation of Ann Aiken to serve as a district judge. She has a very impressive record of public service in Oregon, both as a State judge and as a volunteer on numerous boards and commissions. Most of her career has focused on domestic relations law. She was recently elected to the board of the National Network of Child Advocacy Centers, and is a current member of the National Council of Juvenile and Family Court Judges. Throughout her career she has been tough on crime. The junior Senator from Oregon, a Republican, can personally attest to her commitment to punish criminals severely. He served with her on the Governor's Commission on Juvenile Justice, which resulted in the enactment of some of the toughest juvenile crime laws in the country. During Ann Aiken's time on the bench she has been known for her determination to impose stiff sentences. She frequently imposes the maximum sentences possible, and many times, due to her mastery of the Oregon sentencing guidelines, she

(See other side)

YEAS (67)

Republicans (24 or 44%)	Democrats (43 or 100%)	
Bennett	Akaka	Johnson
Campbell	Baucus	Kennedy
Chafee	Biden	Kerrey
Coats	Bingaman	Kerry
Cochran	Boxer	Kohl
Collins	Breaux	Landrieu
DeWine	Bryan	Lautenberg
Domenici	Bumpers	Leahy
Gorton	Byrd	Levin
Hatch	Cleland	Lieberman
Jeffords	Conrad	Mikulski
Kempthorne	Daschle	Moynihan
Lugar	Dodd	Murray
Mack	Dorgan	Reed
Roth	Feingold	Reid
Santorum	Feinstein	Robb
Sessions	Ford	Rockefeller
Shelby	Glenn	Sarbanes
Smith, Gordon	Graham	Torricelli
Specter	Harkin	Wellstone
Stevens	Hollings	Wyden
Thomas	Inouye	
Thompson		
Thurmond		

NAYS (30)

Republicans (30 or 56%)		Democrats (0 or 0%)
Abraham	Hagel	
Allard	Helms	
Ashcroft	Hutchinson	
Bond	Hutchison	
Brownback	Inhofe	
Burns	Kyl	
Coverdell	Lott	
Craig	McCain	
D'Amato	McConnell	
Enzi	Murkowski	
Frist	Nickles	
Gramm	Roberts	
Grams	Smith, Bob	
Grassley	Snowe	
Gregg	Warner	

NOT VOTING (3)

Republicans (1)	Democrats (2)
Faircloth-2AN	Durbin-2
	Moseley-Braun-2

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

is able to impose sentences that are significantly longer than any other Oregon judges are able to impose. In one terrible case, we, and she, admit she made an error. In that 1993 case, the maximum sentence she could have imposed was 5 years in prison. However, under Oregon law at the time, she also had the option of sentencing him to just 90 days in jail and psychiatric counseling. She chose the latter because the Oregon prison to which he would have gone did not have such counseling. In hindsight, she realizes that it was a grave mistake not to give him a longer sentence. We urge our colleagues not to judge her by this one mistake. They should look, instead, at her overall record. She has broad support in Oregon from law enforcement officials, prosecutors, Democrats, and Republicans. We urge our colleagues to support her as well.

Argument 2:

We agree with the above assessment. Also, we will not let this moment pass without again complaining about the slow pace of appointing judges since the Republicans took control of Congress. Partisan and narrow ideological efforts to impose political litmus tests on judicial nominees have left us with a dangerously high vacancy rate in the Federal courts. Approximately 1 in 10 Federal judgeships are currently unfilled, and one-third of those vacancies have existed for more than a year and a half. As Chief Justice Rehnquist recently noted, "Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the Federal judiciary." President Clinton, in his State of the Union address, promised that he would try to break the logjam this year. We will do whatever we can to help him. With that said, we urge confirmation.

Argument 3:

We support confirmation of Ann Aiken as well. However, those Senators who complain that it took too long to reach a decision on this nominee are mistaken. Her decision in the case of Oregon v. Ronny Lee Dye was, and is, a very grave matter of concern. Rather than simply rejecting her because of that decision, though, the Judiciary Committee conducted a thorough review of her record and her judicial views. As a result of that review, a majority of Committee Members, including the Chairman, concluded that her decision represented poor judgment on one case, which she regrets, rather than an unacceptable judicial philosophy. Many conservative Members were particularly pleased with her generally tough treatment of criminals, and with her statement that Justice Frankfurter had the strongest influence on her thinking, because "of his staunch adherence to the principle of judicial restraint and his reluctance to substitute the inclinations of the court for the express will of the legislature." Had this careful review process not been followed we would not have gained the information we need to justify voting in her favor, and she probably would have been rejected. This careful review process, of course, also results in the rejection of some nominees who initially seem acceptable. Only recently, after the Judiciary Committee had expeditiously reviewed and held hearings on a nominee, did information surface that caused that nominee to withdraw. Would the country have been well served if the Senate had rushed to judgment, rejecting Ann Aiken and approving, for life, an individual who was unfit to serve on the Federal bench?

Many Democratic Senators are more than willing to rubberstamp any judicial nominees that are sent to them by the President (though this willingness mysteriously did not emerge until after a Democrat President took office). For them, it seems to be more a matter of partisan politics than of a constitutional responsibility to advise and consent. They complain mightily about the supposedly slow pace for confirming Federal judges, and they use misleading statistics to claim that there is a "vacancy crisis" because of that supposedly slow pace. Our colleagues can complain to their hearts' content, but we will not be railroaded. Instead, each time they complain, we will bring up the facts and statistics that they somehow fail to mention.

Currently, there are 756 active judges and 432 senior judges (senior judges are judges who are in semi-retirement; they are relieved of many administrative requirements, but, by law, they continue to hear cases). The current vacancy rate is 88, but because so many retiring judges have gone on senior status the total number of judges available to hear cases is at an all-time high. Further, even if there were not so many senior judges available, there is nothing at all abnormal about having a vacancy rate of 88. According to the Clinton Administration, a vacancy rate of 7 percent in the Federal judiciary constitutes full employment because of normal attrition and the time it takes to confirm new judges. The Clinton Administration came up with this figure when Democrats were in the majority in the Senate and controlled the confirmation process. We are presently at a rate of about 10 percent; how can having vacancies just 3 percent over full employment constitute a crisis? We note also that many of the present openings did not occur until after the Senate recessed for the year in 1997, and that the President has yet to nominate people to fill 32 of the 88 vacancies--now, we know our Democratic colleagues would love for us to blindly embrace the President's nominees, but it is very hard for us to confirm people before they have been nominated. Our colleagues tell us that Chief Justice Rehnquist has urged the Senate to act quickly to fill existing vacancies; they do not report that in 1992 he had the same request, when there were 113 vacancies, fewer senior judges, a Republican President, and a Democrat-controlled Senate. The very same Democratic Senators who are continually wringing their hands about the so-called crisis today did not utter a peep about the 113 vacancies in 1992 or the record 148 vacancies in 1991 (nor did America's pravda press corps, though editorialists across the country have been teary-eyed over the supposed current crisis). Our colleagues also fail to mention that Chief Justice Rehnquist praised the 104th Congress for enacting habeas corpus and prison litigation reforms, which he said would greatly reduce the workload for Federal judges.

We are not saying that Democrats were playing politics with judicial appointments in 1992. Though a much stronger case can

be made against them during the Reagan and Bush years than can be made against Republicans today, we do not believe that the major cause of the high vacancy rates in those years was partisanship. We cannot say the same about our colleagues' current complaints about the nomination process. Our colleagues know that there is nothing abnormal or improper about the current confirmation process, and they know that the current vacancy rate is lower than at many times when they controlled the Senate.

The most repugnant twist to this partisanship is that the Clinton Administration, according to the Washington Post, plans to launch a "fullscale political confrontation" over judicial appointments that will include an effort to paint Republicans as anti-women and anti-minority. After having President Clinton in the White House for the past 5 years, we are not at all surprised that he would follow up his State-of-the-Union applause lines about partisanship with base and baseless accusations of bigotry, though we are certainly not pleased. If the President wants bipartisanship, we are ready and willing to cooperate. If he proceeds with his bigoted plan to politicize the judicial confirmation process, we will resist. The choice is his. The immediate question before the Senate is only whether Ann Aiken should be appointed to the Federal bench. We vote that she should.

Those opposing confirmation contended:

Some decisions are so bad that they cannot be dismissed as anomalies. Judge Aiken made one such decision in 1993, after already having served as a judge in Oregon for 5 years. Her decision was not a beginner's mistake, though even if it were it could not be excused. In the case of Oregon State v. Ronny Lee Dye, a 26-year-old man was convicted of first-degree rape of a 5-year-old girl. We ask our colleagues, if it were their daughter or granddaughter who were raped, what punishment do they believe would be just for the rapist? If it were their daughter or granddaughter, would they think 90 days in jail, 5 years probation, a $2,000 fine, and enrollment in a sex-offender rehabilitation program would be the right sentence? Judge Aiken imposed exactly that sentence on Dye, though she could have sentenced him to up to 5 years in jail (and in our opinion he deserved a lot more than 5 years). Judge Aiken's decision in this case was so horrendous that it cannot be termed a "mistake." It indicates a tendency to show more concern for the criminal than for the victim. We oppose her confirmation, not to punish her for making this bad decision, but because we fear she will make similarly unconscionable decisions if she is given a lifetime appointment to the Federal bench.